



COUNCILMEMBER DONNA FRYE
City of San Diego
Sixth District

MEMORANDUM

DATE: June 1, 2009

TO: Council President Ben Hueso
Mayor Jerry Sanders
City Attorney Jan Goldmith

FROM: Councilmember Donna Frye

SUBJECT: Community Parking District Advisory Board Conflict of Interest Code

Last year the city sought advice from the Fair Political Practices Commission (FPPC) regarding whether the Community Parking District Advisory Boards in the City of San Diego are required to adopt a conflict-of-interest code and if members of those boards are required to file Statements of Economic Interests pursuant to such codes. The FPPC responded (see attached letter) that they are required to adopt a conflict-of-interest code and that members are required to file Statements of Economic Interest. As such, when will this issue be brought forward to the City Council?

Thank you for your attention to this matter.

CC: Honorable City Councilmembers
Andrea Tevlin, Independent Budget Analyst

DF/ks

May 30, 2008

Michael Calabrese
Office of the City Attorney
City of San Diego
1200 Third Avenue, Suite 1100
San Diego, California 92101-4100

Re: Your Request for Advice
Our File No. I-08-067

Dear Mr. Calabrese:

This letter responds to your request for advice on behalf of a council member of the City of San Diego and members of the city's Community Parking District Advisory Boards regarding provisions of the Political Reform Act (the "Act") pertaining to conflict-of-interest codes.¹ In addition to your request, we have received correspondence and documents from Mark Evans that you have asked us to consider in responding to your request. Our letter is based on the facts presented. The Fair Political Practices Commission (the "Commission") does not act as a finder of fact when it renders advice. (*In re Oglesby* (1975) 1 FPPC Ops. 71.) Hence, in those instances where you and Mr. Evans disagree on the facts, we must limit our assistance to stating the applicable law. Because the relevant facts remain unclear, we only provide informal assistance.²

QUESTIONS

1. Are the Community Parking District Advisory Boards in the City of San Diego required to adopt a conflict-of-interest code and are members of those boards required to file Statements of Economic Interests pursuant to such codes?

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

2. If the Community Parking District Advisory Boards are stripped of any decision making powers and rendered purely advisory bodies, as proposed in the docket materials currently under consideration by the city council, does the fact that the city council has approved at least 30 annual parking management implementation plans submitted by such boards since 1997, without modification, require the boards to adopt a conflict-of-interest code pursuant to Regulation 18701(a)(1)(A)(iii)?

3. Is the nine-member La Jolla Community Parking District Advisory Board subject to the Act's requirement to adopt a conflict-of-interest code and are its members required to file Statements of Economic Interests pursuant to such code?

4. As to those Community Parking District Advisory Boards existing prior to January 1, 2003, do their members' disclosure obligations commence on the thirtieth day after the city council adopts a conflict-of-interest code for them per Section 87302(b)?

5. As to those Community Parking District Advisory Boards created after January 1, 2003, are the disclosure obligations retroactive to the time they were created under Regulation 18754?

6. As to those Community Parking District Advisory Boards created after January 1, 2003, are their members required to file: a) assuming office statements of economic interests applicable as of the time they assumed their positions; b) annual statements of economic interests for each calendar year completed since then; and c) leaving office statements of economic interests, if they have left office?

5. As to those Community Parking District Advisory Boards created after January 1, 2003, must members who have resigned, or are not currently serving, also file statements of economic interest as described in question number six above?

CONCLUSIONS

Yes as to all questions. See discussion below.

FACTS

San Diego has six Community Parking Districts. Three were created on December 2, 1997. The other three, including the La Jolla Community Parking District (the "La Jolla District") were created on June 27, 2005. Community Parking Districts are created pursuant to Council Policy No. 100-18 adopted by the San Diego City Council (the "Policy".) The Policy allows a local entity, such as a redevelopment corporation, business improvement district board, or other non-profit corporation, to propose the formation of a Community Parking District. When such a district is formed, the city council designates a legal entity as the Community Parking District Advisory Board (the "Advisory Board"). The Community Parking District Program is administered by the

City Manager. Under the Policy, 45 percent of the total meter revenues generated within each Community Parking District are allocated to that district. Each year an Advisory Board is to develop and recommend to the city council an annual improvement/implementation plan and budget for the next year.

To understand the nature of the activities and duties of the Advisory Boards, we have reviewed the Policy and other documents provided by you and Mr. Evans. In its "Purpose" section, the Policy states that "certain parking management-related revenues earned by the city within the geographic boundaries of an existing or newly designated Community Parking District may be allocated to the Community Parking District *to implement and manage improvements* that address parking impacts." According to Section A.1.c. of the Policy, a request from a Community Parking District must include a conceptual plan for how the Community Parking District will be managed and the plan must include "the legal entity to be designated as the Community Parking District Advisory Board *for the purpose of managing the District.*" (Emphasis added.) The Policy provides that "each Community Parking District Advisory Board shall develop, through community input, and recommend to the city council an annual improvement/implementation plan and budget for the next year" and that approval of the plan and budget "shall rest with the city council." Finally, the Policy provides that "such approval may be granted by authorizing the City Manager to execute a written Agreement between the city and each Community Parking District Advisory Board, or through the annual citywide budgetary approval process."

You describe the Advisory Boards' "management" of a Community Parking District to include: "how community input will be obtained, sources and amounts of revenue, proposed improvements, financing of improvements, and budgeting." It is unclear if such activities are performed in developing a plan for proposal to the city council or if these are actions implementing an approved plan. You conclude, based on that part of the Policy that calls for the allocation of 45 percent of a district's revenues to the district, that these revenues are "managed independently by the Board without Council or mayoral oversight."

Mr. Evans contends that the Policy does not empower the Advisory Boards to "disburse funds or take any other action except in accordance with" the annual plan and budget that has been approved by the city council. He states that a standard annual agreement between the city and the Advisory Boards requires that each Community Parking District submit, by the 15th day of each month, a report documenting its activities, income, and expenditures for the preceding month, along with copies of all supporting receipts, invoices, checks, payroll statements, bank statements, and other records for services performed. He also notes that the La Jolla District Advisory Board does much more than just submit an annual plan and budget to the city council and that in these other activities the Board's recommendations to the city are subject to intensive review and frequent revisions, including the power to veto, by the city's Traffic Engineering Division.

You have recently investigated the history of city council treatment of Advisory Boards' recommended annual plans. You have examined thirty instances in which annual plans recommended by the Advisory Boards were presented to the city council since 1997 when the Community Parking District program was initiated.³ You have concluded that in all thirty instances, the city council approved the plan submitted to it without modification or amendment. Mr. Evans points out that prior to submission of a plan to the city council, Community Parking Districts submit their proposed plans to city staff for review. He states that only after rigorous review, and often substantial revisions dictated by city officials, are the plans submitted to the city council. You acknowledge that staff of the City Planning and Community Investment Department, which serve as a liaison to the Advisory Boards, collaborate with the Advisory Boards regularly and that Advisory Board recommended plans are commonly shaped by this collaboration before they are presented to the city council.

Certain members of the La Jolla District Advisory Board have suggested that the circumstances under which their District was formed clearly show that the Advisory Board is genuinely "advisory" and has no decision making authority. This contention is based principally on the city council resolution adopted on June 27, 2005 authorizing the creation of the La Jolla District and designating Promote La Jolla, Inc. as its Advisory Board, a Proposal for the Formation of the La Jolla Community Parking District submitted by Promote La Jolla, Inc. (the "Proposal"), and a report issued by the City Manager's Office dated April 5, 2005 (provided to us by Mr. Evans.)

The Proposal refers variously to "Promote La Jolla" in some places and to "the La Jolla Community Parking District Advisory Board" in others, evidencing an intent to distinguish the two bodies. The City Manager's Report differentiates the two "advisory boards" by calling one the "community-based advisory board" and the other the "fiscal and contractual advisory board." The report states: "Given that the city will contract with Promote La Jolla for all administrative, financial management, staff and other logistical services related to the nine (9) member community-based advisory group, city Staff supports the designation of Promote La Jolla as the fiscal and contractual advisory board for the CPD." The proposal provides further that while the La Jolla Community Parking District would be "guided" by a nine-member Community Parking District Advisory Board, it would be "administered" by Promote La Jolla, "the city-recognized Business Improvement District (BID) for La Jolla."

You note that the two bodies are assigned distinct duties with the La Jolla District Advisory Board being charged with placing its meeting notices in local newspapers,

³ This history of the various Advisory Boards suggests that there should have been thirty-nine such instances. You have been unable to determine whether some Community Parking Districts failed to submit plans for some years, or whether you are simply unable to locate some of the records. However, you have accounted for all such plans for all Community Parking Districts starting with 2003, i.e. the last twenty-four consecutive plans.

producing a quarterly newsletter, conducting annual satisfaction surveys, *annually developing the specific parking management plan to submit to the city council* and determining suitable locations for paid on-street parking. You also note that the proposal states in two places that “any and all of these programs would have to be approved by the city council” in the annual contract for Community Parking District management between the city and Promote La Jolla.

Finally, you cite a section of the most recent contract between the city and Promote La Jolla, Inc., the “Program Narrative,” as describing the nine-member La Jolla District Advisory Board as the group by which the Community Parking District is guided and this guidance is provided “under the auspices of Promote La Jolla.” The document contains proposals for the Community Parking District to buy parking passes from parking garages that are underutilized and re-sell them to the public below market rate, to make time limit parking changes, and to propose new signage in all current sign locations in an area called the Village. You state that while this document was approved by the city council when it approved the contract, the specific implementation of the proposals, i.e. what parking passes to buy, from which garages, at what prices, at what prices to re-sell them, what time limit changes should be made, and what new signs should say, was not submitted or approved by the city council. You conclude that the contract contemplates implementation of the proposals by the nine-member board, and not Promote La Jolla, Inc., as indicated by the final sentence of the Program Narrative that states “All elements of the narrative are subject to Community Parking District Board implementation.”

ANALYSIS

Question 1 - Are the District Advisory Boards required to adopt a conflict-of-interest code and are members of those boards required to file Statements of Economic Interests pursuant to such codes?

Section 87300 provides that every “agency” shall adopt and promulgate a conflict-of-interest code pursuant to Article 3 of the Act. Section 82003 defines “agency” as any state agency or local government agency. “Local government agency” is defined in Section 82041 to include “a district of any kind” or any “department, division, bureau, office, board, commission, or other agency” of a district. Therefore, both the Community Parking Districts and the District Advisory Boards are local government agencies and are required to adopt and promulgate a conflict-of-interest code.

Public officials, including members of boards or commissions of a local government agency, disclose their financial interests in accordance with the conflict-of-interest code developed by their respective agency. (See Sections 87300-87313; *Simon Advice Letter*, No. I-04-013, citing to *Weaver Advice Letter*, No. A-03-225.) A conflict-of-interest code enumerates the positions within the agency that make or participate in making decisions that may have a foreseeable and material effect on any financial

interest. (Section 87302). Persons designated in the conflict-of-interest code are “designated employees,” a term that includes any “officer, employee, member, or consultant” of an agency whose position involves making or participating in making decisions that may have a foreseeable and material effect on any financial interest. (Section 82019(c).) The term “designated employee” does not include an unsalaried member of any board or commission who serves in a solely advisory function. (Section 82019; *Simon* Advice Letter, *supra*; *Weaver* Advice Letter, *supra*.)

For purposes of determining disclosure requirements of designated employees under Section 82019,⁴ Regulation 18701(a)(1) defines a member as follows:

“Member” shall include, but not be limited to, salaried or unsalaried members of committees, boards or commissions with decisionmaking authority. (A) A committee, board or commission possesses decisionmaking authority whenever: (i) It may make a final governmental decision; (ii) It may compel a governmental decision; or it may prevent a governmental decision either by reason of an exclusive power to initiate the decision or by reason of a veto that may not be overridden; or (iii) It makes substantive recommendations that are, and over an extended period of time have been, regularly approved without significant amendment or modification by another public official or governmental agency.”

Making a final governmental decision

Under the Act, a public official makes a governmental decision when the official, acting within the authority of his or her office or position:

- “(1) Votes on a matter;
- “(2) Appoints a person;
- “(3) Obligates or commits his or her agency to any course of action;
- “(4) Enters into any contractual agreement on behalf of his or her agency . . .” (Regulation 18702.1(a).)

You have cited a previous advice letter in which we advised that board members of the City of Stockton’s Central Parking District should be designated in a conflict-of-interest code under certain conditions. In the *Petzold* Advice Letter, No. A-89-591, we concluded that members of the advisory board were not purely advisory if they had authority to make decisions (i) to adopt rules, rates and regulations for the administration

⁴ This regulation also applies to determine if individuals are “public officials” for purposes of the disqualification rules of the Act. (Sections 82048 and 87103.)

and management of the city's Central Parking District or (ii) to hire or fire personnel, purchase supplies, or enter into contracts. In other advice letters, the authority to hire outside consultants was considered determinative because it constitutes entering into a contractual agreement on behalf of the agency. (*Ewing* Advice Letter, No. 89-480; *Amen* Advice Letter No. A-88-304.) In the *Glacken* Advice Letter, No. I-92-265a, we advised that HIV Care Consortia, established under federal legislation, were not purely advisory bodies because in order to accomplish their objectives of assessing community needs, establishing plans to deliver services and monitoring the plans, they entered into agreements with other entities for the provision of such services. In the *Weaver* Advice Letter, No. A-03-225, we advised that the Quality Education Commission, created by Education Code Section 64201 et seq., was making governmental decisions because it had the authority to appoint an executive director to run the day-to-day activities of the commission.

In contrast, we advised in the *Calonne* Advice Letter, No. A-90-292, that a committee consisting of representatives of the cities of Palo Alto and Menlo Park and of Stanford University and a private landowner, created to advise the city councils of the two cities regarding a proposal to connect two roads affecting both jurisdictions, was a purely advisory body. This conclusion was based on the committee's charter providing that the committee would review and recommend financing plans for the project and identify policy level decisions that would be referred to the city councils for acceptance. While the committee contracted for the services of a consultant, charter provisions required that it could do so only at the direction of the city council and that the consultant had to be selected and recommended by city staff.

In the *Woodbury* Advice Letter, No. A-90-665, we advised that a local task force formed pursuant to the Integrated Waste Management Act of 1989 to assist cities and the county in the preparation and adoption of various solid waste plans and elements required under the act was purely advisory. This was based upon a review of its enabling authority in the statute and regulations setting forth procedures for task force action. The enabling authority provided that the task force was to *assist* in coordinating the development of city source reduction and recycling elements and to *assist* in preparing a countywide siting element. The regulations provided that the task force would *assist and advise* in the review of SRR Elements, *assist* jurisdictions in the implementation of the SRR elements and that review of both the preliminary and final SRR element would be done by the task force as well as the county, adjacent cities, any association of regional governments and the Integrated Waste Management Board. It was noted that similar degrees of input and approval occurred in the creation of the countywide siting element and integrated waste management plan. We concluded that "while the regulations do give the task force the responsibility to set certain time schedules and conduct a five-year review,... these responsibilities alone are not enough to confer the task force with sufficient decision-making authority to cause the members of the task force to become public officials."

In the *Dickerson* Advice Letter, No. I-90-729, we considered whether an "Airport Round Table" consisting of various elected and appointed officials from Foster City's Airport Commission, San Francisco, and eight cities located in San Mateo County, made governmental decisions. In that instance, the requestor stated that the Airport Round Table had no power to require that anything be done. We found, accordingly, that it did not have decision-making authority.

In the *Milne* Advice Letter, No. A-87-250, we were told that the California Commission on Educational Quality, created by executive order to study California's elementary and secondary education system, and to recommend needed reforms, was given no power to implement its recommendations. Accordingly, we concluded that it was a purely advisory body.

Finally, in the *Busterud* Advice Letter, No. A-92-542, we advised that a blue ribbon task force appointed by the mayor to assist the city's finance committee with an organizational review of the city's general fund operations was purely advisory. While at the conclusion of the project, the task force was to present its recommendations to the city council, all of its other functions consisted of assisting the finance committee. The task force *assisted* the committee in defining the scope of the organizational review, reviewing requests for proposal for consulting services, selecting the consultant to perform the review, reviewing the consultant report and preparing recommendations to the city council.

Nothing in the facts or materials we have been provided indicates that the Advisory Boards have authority to adopt rules, rates or regulations, purchase supplies, hire, appoint or fire personnel, or hire outside consultants. Thus it appears that none of the actions of the advisory bodies which we found to be making governmental decisions are present here. However, you have stated that the Advisory Boards have the authority to "manage" 45 percent of the funds of the Community Parking District. Mr. Evans states that the La Jolla Advisory Board has no authority to disburse funds or take any other action except in accordance with the annual plan and budget that has been approved by the city council. He also notes that the standard contract between the city and the Advisory Boards requires each Advisory Board to submit monthly reports documenting its activities, income, and expenditures for the preceding month, along with copies of all supporting receipts, invoices, checks, payroll statements, bank statements, and other records for services performed, and that any expenditure contained in the report that is not consistent with the approved budget or is not supported with proper documentation must be considered an ineligible expenditure.

Assuming all of these statements are accurate, it appears that the Advisory Boards have some decisionmaking authority regarding the disbursement of funds. The authority to disburse public funds, we believe, comes as close to authority to make a governmental decision as is the authority to purchase supplies. While a budget may authorize the expenditure of a total amount in a fiscal year for certain purposes, budgets typically do

not designate each vendor or recipient of each expenditure. Presumably, decisions regarding the specific recipients of the funds and the amounts that would be disbursed are made by the Advisory Board. If that is the case, the Advisory Boards are dispersing public funds and their members are obligating the Community Parking District to a course of action. (Regulation 18702.1(a)(3).) Moreover, expenditure of funds often involves entering into contractual agreements on behalf of an agency (Regulation 18702.1(a)(4). It appears, therefore, that the Advisory Boards possess decisionmaking authority.

Compelling or preventing a governmental decision.

Even if one were to conclude that the Advisory Boards lack authority to make final governmental decisions, if they may compel a governmental decision or prevent a governmental decision either by reason of an exclusive power to initiate the decision or by reason of a veto that may not be overridden, this authority would require that a conflict-of-interest code be adopted. (Regulation 18701(a)(1)(A)(ii).) You state that under the Policy, once a Community Parking District is established, its Advisory Board is the only entity authorized to initiate a plan to manage the Community Parking District.⁵ While we do not read the Policy as expressly stating this, the Commission does not interpret bodies of law outside the Political Reform Act, and it does not do so here. (Nielson Advice Letter, No. A-02-147.) Moreover, Mr. Evans disagrees with your conclusion, stating that “it is impossible to find in the terms of Council Policy 100-18 any evidence that the City Council delegated to the Advisory Board an “exclusive” power to initiate action.” As noted in the opening paragraph of this letter, the Commission does not act as a finder of fact when it renders advice. Thus, we reach no conclusion as to whether the Advisory Boards have the power to “prevent a governmental decision...by reason of an exclusive power to initiate the decision,” under Regulation 18701(a)(1)(A)(ii).

Making substantive recommendations that are, and over an extended period of time have been, regularly approved without significant amendment or modification by another public official or governmental agency.

The language of Regulation 18701(a)(1)(A)(iii) requires that we assess the impact of an advisory body’s recommendations by analyzing the extent to which its recommendations have been followed in the past. If the recommendations of a body have a significant impact upon the ultimate outcome of a decision, the body is considered to have decision making authority and is therefore not solely advisory. (*In re Rotman* (1987) 10 FPPC Ops. 1.) The Commission staff has advised on several occasions that if there is a history or track record of “rubber stamping” an advisory body’s recommendations, the advisory body will be considered to have decision making authority. (See, e.g., *Baird* Advice Letter, No. A-94-299; *Czach* Advice Letter, No. A-91-503; *Woodbury* Advice

⁵ You cite to Section (B)(1) of the Policy; however, it appears that the mandate to Advisory Boards to develop and recommend an annual plan and budget is contained in Section (D)(1).

Letter, A-90-665; *Paley* Advice Letter, A-90-583; *Korade* Advice Letter, A-89-715; *Ball* Advice Letter, I-89-671.)

a. Substantive Recommendations

You indicate that the annual improvement/implementation plan and budget must include how community input will be obtained, sources and amounts of revenues and expenditures, and proposed improvements. It may also include policies on meter placement, rates, enforcement, time limits, and valet parking, proposals for property acquisition and other matters related to parking management in the district. Recommending a plan that addresses these kinds of issues involves the making of substantive recommendations.

b. No Significant Amendment or Modification

The Commission has concluded on several occasions that where an advisory committee makes substantive recommendations to a governmental agency that are regularly approved *without significant modification*, then the members are public officials under the Act and they are subject to the disclosure and disqualification provisions. (See *Woodbury* Advice Letter, *supra*; *Paley* Advice Letter, *supra*; *Korade* Advice Letter, *supra*.) You state that the annual plans submitted by all Community Parking Districts starting with 2003, i.e., the last twenty-four consecutive plans, were approved by the city council without amendment or modification and that all thirty plans you were able to locate from the program's inception in 1997 have been approved by the city council without modification or amendment. On that basis, you have concluded that there is a history of the Advisory Boards' recommendations being routinely accepted without amendment or modification. If that is the case, the Advisory Boards have been converted from solely advisory groups to ones making or participating in the making of governmental decisions. (*Ball* Advice Letter, *supra*.)

Mr. Evans asserts that the plans ultimately submitted to the city council are not the plans initiated by the La Jolla District Advisory Board, but are, instead, plans that reflect rigorous review and substantial revision by city staff, who "dictate" changes to the plan initially submitted to them for review. The question arises whether city staff's review of the initial plans constitutes a "substantive, intervening review" of the plans. He also would have us consider recommendations made by the Board on particular traffic issues that are submitted and ultimately decided by the city's Traffic Engineering Division, rather than limiting the history to just plan recommendations.

In two prior advice letters, we have considered recommendations made by advisory bodies where an intervening third party public agency or public official reviewed the recommendations before they were submitted to the ultimate decision maker.

In the *Andriese* Advice Letter, (*supra*), we considered whether an advisory committee that made recommendations to a joint powers agency's board acted in a purely advisory role where the recommendations were first reviewed by an executive director of the agency who then developed a staff recommendation to the board. We said that the extent of the review by the executive director was determinative. If the executive director performed a substantive, intervening review of the recommendations, the advisory committee was not making final decisions and was a purely advisory body.⁶

In the *Paley* Advice Letter, (*supra*), we considered a deferred compensation advisory committee whose recommendations were first submitted to a plan administrator who then took the recommendations into consideration before making his own recommendations to a county board of supervisors, the ultimate decision maker. In advising that the committee was purely an advisory body, we took into account the fact that the committee was formed for a single purpose and when its work was completed, it would be disbanded. This advice came with the admonition that if in the future the committee's substantive recommendations would be regularly approved without significant amendment or modification by the plan administrator over an extended period of time, then the members would qualify as public officials.

In both cases, we advised that if the advisory committee's recommendations were regularly approved without significant amendment or modification *by the reviewer* over an extended period of time, then the members would qualify as public officials. This suggests that if the Advisory Boards' recommendations were regularly "approved" by city staff without amendment or modification, their members would be public officials. Mr. Evans states his belief, at least with respect to the La Jolla District, that city staff "dictates" substantive changes to annual plans, as opposed to merely collaborating with the Advisory Boards to produce the Advisory Boards' final recommendations. He also urges us to consider other recommendations, unrelated to the annual plans, that the Advisory Board makes directly to the Traffic Engineering Division who has authority to take final action and frequently revises or even vetoes the recommendations. We are not persuaded to do so, inasmuch as he admits his information is based merely on his "anecdotal understanding" of these matters. There is no record from which to determine that recommendations of the La Jolla District Advisory Board are subject to significant amendment or modification by city staff.

In the two cited cases, there were significant facts that are absent here. In each of those cases, the advisory body did not make recommendations directly to the ultimate decision maker; the reviewer of the recommendations was required to conduct an independent review; and the reviewer was charged with making its own recommendation. In recommending an annual plan, the Advisory Boards make their recommendations

⁶ In that case, the executive director's role was new and there was no established history of the committee's recommendations being routinely accepted by him. Therefore, we concluded that the advisory committee members were still considered to be public officials based on the history of the board routinely accepting the committee's recommendations.

directly to the city council. None of the documents we have reviewed indicate that the Advisory Boards must first submit their recommendations to city staff. Finally, there appears to be no mechanism for staff to make their own recommendations regarding annual plans apart from those of the Advisory Boards. It appears, therefore, that city staff's review of the initial plans does not constitute "substantive, intervening review" of the plans under Regulation 18701(a)(1)(iii). Because there is a history of the Advisory Boards' recommendations being routinely accepted without amendment or modification by the city council, the Advisory Boards have been converted from solely advisory groups to ones making or participating in the making of governmental decisions.

Question 2 - If the Advisory Boards are stripped of any decision making powers and rendered purely advisory bodies, does the fact that the city council has approved at least thirty annual parking management implementation plans submitted by such boards since 1997, without modification, require the boards to adopt a conflict-of-interest code pursuant to Regulation 18701(a)(1)(A)(iii)?

You have provided copies of proposed amendments to the Policy together with proposed resolutions to be adopted by the city council that are intended to strip the Advisory Boards of any decision making powers. As stated above, the Advisory Boards have made recommendations that have been, over an extended period of time, regularly approved by the city council without significant amendment or modification. Adoption of the proposed new Policy does not avoid the application of Regulation 18701(a)(1)(A)(iii). (See the *Andriese* Advice Letter, *supra*.)

This does not mean the history of an advisory body may never change. In the *Andriese* Advice Letter, *supra*, the structure of a regional committee was changed so that instead of the committee making recommendations directly to the decision maker, it was required to first make its recommendations to another public official, either the executive director or the medical director of the agency. That official would then develop a staff recommendation for the decision maker's consideration. We advised that if, *over time*, the medical director's or executive director's review of the committee recommendations became sufficient to meet the "substantive, intervening review" requirement, then committee members would no longer have any disclosure requirements. Please note the new structure did not automatically change the filing obligations of committee members. A new "track record" had to be established over a period of time.

Question 3 - Is the nine-member La Jolla District Advisory Board subject to the Act's requirement to adopt a conflict-of-interest code and are the members required to file Statements of Economic Interests pursuant to such code?

We have reviewed the documents you and Mr. Evans have submitted, including the city council resolution designating Promote La Jolla, Inc. as the La Jolla Community Parking District Advisory Board, the proposal submitted by Promote La Jolla, Inc. at that time, which was approved by the city council, the most recent contract between Promote

La Jolla, Inc. and the City Manager's Report. We see no basis for distinguishing the nine-member La Jolla Advisory Board from the other Advisory Boards in our analysis of whether they are subject to the requirements of Regulation 18701(a)(1)(A). While there appears to be some confusion as to whether the nine-member advisory board or Promote La Jolla, Inc. is the "Advisory Board" as used in the Policy as it applies to the La Jolla District, it appears that it is the nine-member advisory board that prepares and submits to the city council the annual parking management plan and implements that plan once adopted by the city council. Accordingly, this board must adopt a conflict-of-interest code and its members should be designated in the conflict-of-interest code.

Questions 4 & 5 - As to those Advisory Boards existing prior to January 1, 2003, do their members' disclosure obligations commence on the thirtieth day after the city council adopts a conflict-of-interest code for them per Section 87302(b)? As to those Advisory Boards created on or after January 1, 2003, are their members' disclosure obligations retroactive to the time the boards were created under Regulation 18754?

Regulation 18754 implements the provisions of Section 87302.6, which provides that a member of a board of a newly created agency shall file a statement of economic interests at the same time and in the same manner as individuals filing under Section 87200. Regulation 18754 defines "newly created agency" as one which came into existence on or after January 1, 2003. Hence, members of Advisory Boards created after January 1, 2003, are subject to the filing requirements of Section 87302.6, which imposes a duty to file an initial statement of economic interests not more than 30 days after assuming office. (See Regulations 87200 and 87202.)

Members of Advisory Boards created before January 1, 2003, are not subject to Section 87302.6 and Regulation 18754 and are instead governed by the filing requirements of the conflict-of-interest statement adopted by the Community Parking District and which, under Section 87302, must provide that they file an initial statement within 30 days after the effective date of the conflict-of-interest code.

Questions 6 & 7 - As to those Advisory Boards created on or after January 1, 2003, are their members required to file: a) assuming office statements of economic interests applicable as of the time they assumed their positions; b) annual statements of economic interests for each calendar year completed since then; and c) leaving office statements of economic interests, if they have left office? As to these Advisory Boards, must members who have resigned, or are not currently serving, also file statements of economic interest as described in question no. 6?

Members of these Advisory Boards are required to file all of the noted statements of economic interests. We find no exceptions to the filing requirements of Section 87302.6.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Scott Hallabrin
General Counsel

By: Valentina Joyce
Counsel, Legal Division

VJ:jgl